

### **Remarks/Arguments**

Claims 11-18, 21-28, and 31-46 are pending in the present application. Applicants have reviewed the Examiner's comments in the Office Action and submit that the claims of the present application are allowable over the prior art of record as will be explained. As such, each of these claims is neither anticipated nor obvious in view of the prior art of record.

Applicants note that the Examiner has withdrawn the rejections based on 35 U.S.C. § 112. Applicants agree with the Examiner that these rejections have been traversed and were properly withdrawn.

Applicants also acknowledge and agree with the Examiner's withdrawal of the objection to the drawings.

#### **I. Claims 11, 13, 15, 17, 21, 23, 25, 27, 31, 33, 35, 37, 39, 41, 43, and 45-46 are not Anticipated**

The Examiner rejected claims 11, 13, 15, 17, 21, 23, 25, 27, 31, 33, 35, 37, 39, 41, 43, and 45-46 for anticipation under 35 U.S.C. § 102 based on U.S. Patent No. 5,534,744 to Leroux et al. ("the '744 patent"). One of the main bases for previously rejecting the above-referenced claims was that Applicants did not recite that the light absorbing layer or anti-reflecting layer was "within" the cap layer. Applicants have amended the claims to recite this feature in the previous amendment.

The Examiner has contended that light absorbing layer 52 in Figure 6 equates to the cap layer of the present invention. However, it is plain that layer 52 is not within the layer 4 but is disposed above layer 4. This applies equally to an anti-reflecting layer which would also be disposed above cap layer 4.

Noting this, there cannot be a basis for anticipation of the above-referenced claims by the '744 patent because the two are completely different structures: the structure in Figure 6 of the '744 patent and the claims of the present invention. Therefore, there are no grounds upon which the Examiner can contend that there are any sound bases to assert that claims 11, 13, 15, 17, 21, 23, 25, 27, 31, 33, 35, 37, 39, 41, 43, and 45-46 are anticipated by the '744 patent. Thus, this anticipation rejection should be withdrawn.

Applicants have traversed the anticipation rejection of claims 11, 13, 15, 17, 21, 23, 25, 27, 31, 33, 35, 37, 39, 41, 43, and 45-46 based on the '744 patent. Applicants' basis for overcoming this rejection applies equally to dependent claims 12, 14, 16, 22, 24, 26, 32, 34, 36, 40, 42, and 44. Applicants submit that the Examiner does not have a basis to raise the anticipation against defendant claims 12, 14, 16, 22, 24, 26, 32, 34, 36, 40, 42, and 44.

## **II. Claims 12, 14, 16, 22, 24, 26, 32, 34, 36, 40, 42, and 44 are Non-Obvious**

The Examiner has rejected claims 12, 14, 16, 22, 24, 26, 32, 34, 36, 40, 42, and 44 for obviousness under 35 U.S.C. § 103 based on the '744 patent. In the previous section, Applicants have demonstrated that claims 11, 13, 15, 17, 21, 23, 25, 27, 31, 33, 33, 37, 39, 41, 43, and 45-46 from which 12, 14, 16, 22, 24, 26, 32, 34, 36, 40, 42, and 44 depend are not anticipated by the '744 patent. Accordingly, these dependent claims like the claims from which they depend are not anticipated by the '744 patent. If these dependent claims and the claims for which they depend are not anticipated by the '744, the dependent claims cannot be found obvious in view of '744 patent because the dependent claims only add features to the claims for which they depend. Therefore, Applicants respectfully request that the Examiner withdraw the rejection raised against claims 12, 14, 16, 22, 24, 26, 32, 34, 36, 40, 42, and 44 based on the '744 patent.

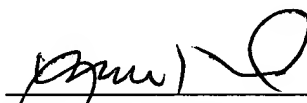
## Conclusion

Applicants have traversed the Examiner's bases for rejecting claims 11-18, 21-28, and 31-46 for anticipation under 35 U.S.C. § 102 and obviousness under 35 U.S.C. § 103. Given this is the case, the present application is in condition for allowance.

The present invention is new, non-obvious and useful. Reconsideration and allowance are respectfully requested.

Dated: 2-27-2007

Respectfully submitted,



Wayne M. Kennard  
Registration No. 30,271  
Attorney for Applicants

Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
617-526-6183  
617-526-5000 Fax  
Attorney Docket No. 100718.270CN1